DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL **FOR: HEALTH CARE FINANCING ADMINISTRATION**	1. TRANSMITTAL NUMBER: **03-44**	2. STATE **New York**
	3. PROGRAM IDENTIFICATION: **TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)**	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE **October 1, 2003**	

5. TYPE OF PLAN MATERIAL *(Check One)*:

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN ☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT *(Separate Transmittal for each amendment)*

6. FEDERAL STATUTE/REGULATION CITATION: 42 CFR 447 Subpart C	7. FEDERAL BUDGET IMPACT: **a. FFY 10/01/03 – 03/31/04 ($276,250)**
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: **Attachment 4.19-D, Part I, Pages 88(a), 88(b) and 88(c)**	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*: **New Pages**

10. SUBJECT OF AMENDMENT:
Long-Term Care Services: Residential Health Care Facility Capital Financing

11. GOVERNOR'S REVIEW *(Check One)*:
☐ GOVERNOR'S OFFICE REPORTED NO COMMENT
☒ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
☐ OTHER, AS SPECIFIED:

12. SIGNATURE OF STATE AGENCY OFFICIAL: Kathryn Kuhmerker	16. RETURN TO: **New York State Department of Health, Corning Tower, Empire State Plaza, Room 1466 Albany, New York 12237**
13. TYPED NAME: **Kathryn Kuhmerker**	
14. TITLE: **Deputy Commissioner Department of Health**	
15. DATE SUBMITTED: December 30, 2003	

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17. DATE RECEIVED: DEC 31 2003	18. DATE APPROVED: JUN 21 2004

PLAN APPROVED – ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL: OCT - 1 2003	20. SIGNATURE OF REGIONAL OFFICIAL: Bryan Smith
21. TYPED NAME: Charlene Brown	22. TITLE: Deputy Director, CMSO

23. REMARKS:

FORM HCFA-179 (07-92)

(i)(1) The Commissioner shall timely develop and implement a standardized process for assessing the feasibility of capital mortgage refinancing, including a standard formula for determining the net cost benefit of refinancing, inclusive of all transaction and closing costs. On or before September 1, 2003, each residential health care facility established under Section 2808 of the Public Health Law and certified as a provider pursuant to Title XIX of the federal Social Security Act (Medicaid), except for those facilities established under the Nursing Home Companies Law or the Hospital Loan Construction Law, shall review its existing capital debt structure using the standard formula to evaluate whether or not a material cost benefit could be derived by refinancing its capital mortgage or mortgages, and shall forward the results of such review to the Commissioner. The Commissioner may request and such facility shall submit descriptions of existing mortgage arrangements and debt service reserve funds as needed to implement paragraph (2) of this subdivision. Facilities established under the Nursing Home Companies Law or the Hospital Loan Construction Law shall submit to the Dormitory Authority, the Housing Finance Agency and/or the State of New York Mortgage Agency such information as is required by such agency to evaluate potential refinancing of such capital mortgages.

(2) The Commissioner shall review each facility's submission and make a written determination as to whether or not the facility should refinance its capital mortgage or mortgages, and if so, for what amount, within sixty days of the date of the facility's submission based on the following parameters:

(a) the mortgage refinancing must result in a present value cost benefit that "materially exceeds", as such term is defined by the Commissioner, the amount of all transaction and closing costs associated with the refinancing, including any pre-payment penalties associated with the current mortgage or mortgages. The Commissioner shall do such calculations in a manner consistent with comparable calculations in the State Finance Law;

(b) mortgages may be refinanced for a term greater than the remaining term of the existing debt within certain limits, if doing so would result in the present value cost benefit specified in subparagraph (a) of this paragraph;

(c) mortgages may be refinanced utilizing variable rate mortgage loans, if doing so would result in the present value cost benefit specified in subparagraph (a) of this paragraph. In such cases, for purposes of determining the reimbursable capital interest expense included in the capital cost component of rates of payment determined pursuant to this section, the average interest rate over the life of the refinanced mortgage shall not exceed the interest rate in effect on the previous mortgage debt immediately prior to the refinancing;

(d) not-for-profit and governmental residential health care facilities may utilize taxable mortgage loans to refinance their existing debts, if doing so would result in the present value cost benefit specified in subparagraph (a) of this paragraph;

(e) moneys contained in facility debt service reserve funds may be considered in the evaluation of amounts necessary to be refinanced, but only to the extent such moneys total more than the debt service reserves needed to establish the successor capital mortgage financing;

(f) in no event shall funded depreciation accounts, or building funds accumulated through donor-restricted contributions or unrestricted contributions, gifts, bequests or legacies, be considered in the evaluation of amounts necessary to be refinanced; and

(g) notwithstanding any inconsistent provision of law or regulation to the contrary, the principal amount, including all transaction and closing costs and any pre-payment penalties associated with the previous mortgage or mortgages, that is thereby deemed necessary to be refinanced by the Commissioner, as approved by the Public Authorities Control Board and the United States Department of Housing and Urban Development where appropriate, shall be considered the final, approved mortgage amount for capital cost reimbursement under the relevant provisions of this section.

(3) Notwithstanding any inconsistent provision of law or regulation to the contrary, the capital cost component of rates of payment for services provided for the period beginning October 1, 2003 through March 31, 2004 for residential health care facilities that have been identified by the Commissioner as refinancing candidates pursuant to paragraph (2) of this subdivision shall reflect capital interest costs equivalent to the lower of the prevailing market borrowing rates available on or about July 1, 2003, for refinancing capital mortgages for their remaining term plus two hundred basis points, or the existing rate being paid by the facility on its capital mortgage or mortgages as of that date. The Commissioner shall determine, in consultation with mortgage financing experts, the prevailing market borrowing rates available

to not-for-profit and governmental residential health care facilities to refinance capital mortgages on a tax-exempt fixed rate basis, and to proprietary residential heath care facilities to refinance capital mortgages on a taxable fixed rate basis, for this purpose. Exceptions to this policy shall be provided by the Commissioner to each such facility that demonstrates, prior to December 1, 2003, or thirty days after receipt of the Commissioner's written determination specified in paragraph (2) of this subdivision, whichever occurs later, that:

(a) it has initiated or completed the process of refinancing the mortgage or mortgages in question, in which case the capital cost component of rates of payment shall be timely revised to reflect capital interest costs associated with a refinanced mortgage that conforms to the standards in paragraph (2) of this subdivision. For this purpose, a facility that has applied for approval by the Commissioner, the State Hospital Review and Planning Council and/or Public Health Council to refinance its existing mortgage debt as part of a larger project involving facility replacement, expansion, renovation or change of ownership is considered to have initiated the process of refinancing; or

(b) it can not refinance its capital mortgage or mortgages to achieve the relevant present value cost benefit specified in subparagraphs (a) and (b) of paragraph (2) of this subdivision due to a "lock out" or similar provision in its current mortgage agreement that prevents re-financing; due to some other type of genuine refinancing obstacle, such as an inability of the facility to obtain credit approval from a lender or mortgage insurer, or due to an intervening change in credit market conditions or other relevant circumstances, in which case the capital cost component of rates of payment shall continue to reflect capital interest costs associated with the existing mortgage or mortgages, together with reasonable costs incurred in connections with the facility's attempt to refinance its existing mortgage debt.